

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of	)	
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Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review	)	CC Docket No. 94-1
for Local Exchange Carriers	)	
	)	RM-9210

**COMMENTS OF CTSI, INC.**

CTSI, Inc., formerly known as Commonwealth Telecom Services, Inc. ("CTSI"), by its undersigned counsel, hereby submits its comments in response to the October 5, 1998 Public Notice asking parties to update and refresh the record in the above-captioned proceedings.<sup>1</sup>

CTSI is a competitive local exchange carrier ("CLEC"), currently operating in Pennsylvania and New York providing local exchange services over its own facilities and over Bell Atlantic's ("BA") unbundled loops. CTSI is also certificated to provide local exchange services in Maryland. CTSI urges the Commission to refrain from prematurely establishing pricing flexibility for access reform, because the current and foreseeable state of competition in the local market is not nearly sufficient to justify such measures. However, even if the Commission were to consider implementing pricing flexibility, the Bell Atlantic and Ameritech proposals are fraught with errors and would not provide any valid basis for establishing an appropriate pricing flexibility plan. Accordingly, those plans should be rejected.

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<sup>1</sup> *Commission Asks Parties to Update and Refresh Record For Access Charge Reform and Seeks Comment on Proposals For Access Charge Reform Pricing Flexibility*, Public Notice, FCC 98-256, released October 5, 1998.

## **I. The Commission Should Refrain From Considering Pricing Flexibility**

As the Commission stated in the *Access Charge Reform NPRM*,<sup>2</sup> its goal with pricing flexibility was to “foster the development of substantial competition for interstate access services.” Accordingly, the Commission suggested that it would remove regulatory constraints as the local market became more competitive. Unfortunately, that “more competitive” time has not yet arrived, as the ILECs currently control a monopoly portion of the local market and by any measure, CLECs have obtained only a very small percentage of the local market.<sup>3</sup> It would, therefore, be absolutely premature for the Commission to entertain any ideas about implementing pricing flexibility. Nor is there any rational basis for expecting market conditions to change dramatically in the next few years.

Unfortunately, the Eighth Circuit decision in *Iowa Utilities Board*<sup>4</sup> invalidated the regulatory assumptions underpinning pricing flexibility. When issuing the pricing guidelines in the

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<sup>2</sup> *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket Nos. 96-262, 94-1, 91-213, 96-263, 11 FCC Rcd 21354 (1996) (“*Access Charge Reform NPRM*”).

<sup>3</sup> Collectively, CLECs captured 5.1% of the business market for local telecommunications services in 1997. *United States Competitive Local Markets*, Strategies Group (1998). In 1996 the CAP/CLEC share of nationwide local service revenues, including local exchange and access services, was 1%. Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data (rel. Nov. 1997).

<sup>4</sup> *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), cert. granted sub nom. *AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998) (“*Iowa Utilities Board*”).

*Access Charge Reform Report and Order*,<sup>5</sup> the Commission assumed those regulations and other determinations in the *Local Competition Order*<sup>6</sup> would be the vehicles for implementing the key market-opening provisions of the 1996 Act<sup>7</sup> and would set the stage for competition in the provision of interstate access services. The Commission, therefore, adopted a “market based” approach to access reform that would rely on the development of competition to force access rates toward levels based on forward looking economic costs.<sup>8</sup> However, the Eighth Circuit decision in *Iowa Utilities Board* invalidated the Commission’s basic assumption upon which it rested its “market based” access reform proposals. The Eighth Circuit vacated both the Commission’s pricing guidelines for unbundled network elements (“UNEs”) and its requirement that incumbent local exchange carriers provide combined UNEs.<sup>9</sup> Without these guidelines governing UNEs, the absence of which has substantially slowed the entry of CLECs into the local market, and the resulting minor presence of CLECs, the Commission has no rational basis for proceeding with pricing flexibility.

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<sup>5</sup> *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, Report and Order, CC Docket Nos 96-262, 94-1, 91-213, and 95-72, 12 FCC Rcd 15982 (1997)(“*Access Charge Reform Report and Order*”).

<sup>6</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No.96-98, First Report and Order, 11 FCC Rcd 15499, 15805-15806, paras. 694-606 (1996) (*Local Competition Order*), *vacated in part, aff’d in part*, Iowa Utils. Bd. V. FCC, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *cert. granted on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998).

<sup>7</sup> Pub.L. 104-104, Title VII, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. Sec. 157.

<sup>8</sup> *Access Charge Reform Report and Order* at ¶ 263.

<sup>9</sup> *Iowa Utilities Board*, at 793-94, 813.

Instead of focusing on pricing flexibility at this juncture, the Commission should seek to establish a more thorough implementation and enforcement of the key interconnection, unbundling, and resale obligations of Section 251(c) of the Act. Once the local markets are genuinely competitive, it may be more appropriate to consider the possibility of pricing flexibility.

**II. The Bell Atlantic and Ameritech Proposals are Substantially Flawed and Should be Rejected**

Even if the Commission considered adopting pricing flexibility rules, the Bell Atlantic and Ameritech pricing flexibility proposals have substantial flaws and would undermine the development of competition in the local markets by establishing pricing flexibility based on only potential competition, without evidence of actual competition. Accordingly, the Commission should reject these proposals.

**A. The Bell Atlantic and Ameritech Proposals Would Improperly Permit Pricing Flexibility Before Genuine Competition Exists**

First, the Bell Atlantic and Ameritech proposals are significantly flawed in that they dispense with the essential requirements that some significant signs of competition be established prior to even the initial stages of pricing flexibility. For instance, in the *Access Charge Reform NPRM*, the Commission proposed that even the initial stages of pricing flexibility would not occur until the ILECs have complied with key market opening requirements so that barriers to competition would have been removed.<sup>10</sup> However, the Bell Atlantic and Ameritech proposals essentially abandon this

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<sup>10</sup> *Access Charge Reform NPRM* at ¶169.

important concept, and would permit pricing flexibility upon a showing of “potential” competition without any proof that competition genuinely exists.

In their *ex parte* presentations to the Commission, Bell Atlantic and Ameritech seem to propose that pricing flexibility for transport services should be established if there are 100 DS1 connections at any location or combination of locations in the state or LATA. Similarly, Bell Atlantic and Ameritech suggest that pricing flexibility for switched access services should be established if there exists in a state a negotiated interconnection agreement or a statement of generally available terms (“SGAT”). CTSI believes that negotiated interconnection agreements already exist in all 50 states. Adoption of this “condition,” therefore, would make a mockery of the entire premise of requiring competitive pressure on ILEC rates, and would effectively allow pricing flexibility everywhere, immediately. Bell Atlantic would also require the availability of interim number portability and 100 UNE loops being in service (these conditions, too, are probably met in most if not all states already).

These proposals simply set forth a process that would be advantageous to the ILECs, but one that completely disregards these carriers’ obligations to take the key steps envisioned under the Act that would genuinely promote widespread competition in the local exchange. Other than number portability, Bell Atlantic and Ameritech fail to mention any of the key obligations that the Act envisions could set the stage for competition, such as the competitive checklist in Section 271. This is no surprise, since not one of the BOCs has yet complied with that checklist. Although the existence of a single negotiated or state approved interconnection agreement or an SGAT could mean that competition is technically possible in a state, it hardly means that actual competition exists. Pursuant to the Bell Atlantic and Ameritech proposals, the CLEC need not even be providing

services to the public. Therefore, the fact that an ILEC has executed such agreements does not provide any assurances that the preconditions of competition are in place.

CTSI urges the Commission to reject the Bell Atlantic and Ameritech proposals, as those proposals would permit pricing flexibility without any true requirements that competition be established, which would be contrary to the goals of the Act. If the Commission decides to proceed with a pricing flexibility approach to access reform, it should require both that ILECs demonstrate full compliance with a suitable competitive checklist and, that a far greater degree of actual competition is in place before any pricing flexibility is granted.

**B. The Proposed Deaveraging and Volume and Term Discounts in the Bell Atlantic and Ameritech Proposals Are Overly Broad**

The Bell Atlantic and Ameritech proposals are also flawed in that they would permit Phase I pricing flexibility throughout a LATA or state even though the limited amount of competition they would require for the trigger may only exist in one small part of the LATA or state. For example, the triggers for Phase I pricing flexibility suggested by Bell Atlantic and Ameritech, such as 100 DS1 cross connects or 100 UNE loops, could be met in virtually one or a few central offices or a single office building, respectively. Thus, the Bell Atlantic and Ameritech plans would permit the geographic deaveraging contemplated in Phase I in all density zones throughout a state even though there would be competition in only a tiny portion of the state. Although CTSI supports geographic deaveraging when it is implemented for purposes of reflecting the higher costs of certain regions (as discussed further below), the Commission should not permit geographic rate deaveraging for purposes of ILEC pricing flexibility until there is actual competition throughout the LATA or state. The Commission should, therefore, reject these proposals because they do not sufficiently link the

relief sought to the areas where the proposed triggers for deaveraging are occurring.<sup>11</sup> Absent this linkage, carriers will merely raise rates in areas where there is limited competition to compensate for reductions in areas where there is some competition.

Similar to the proposed deaveraging, the Ameritech and Bell Atlantic proposals to permit volume and term discounts, competitive responses to RFPs, and contract tariffs are not justified by the meager showing of competition proposed by these carriers. It would not be appropriate to permit carriers to establish discounted offerings on a selective, discriminatory basis throughout a state or LATA based on a showing of competition in a narrow area.

Moreover, the Bell Atlantic and Ameritech proposals omit key safeguards, in that they do not address whether they plan to use discounts, RFPs, and contract tariffs to create head room under price caps so that they could raise rates for customers that do not receive discounts. The Bell Atlantic and Ameritech plans also fail to address the extent to which these discounted offerings would be available to other customers. CTSI submits that limiting these offering to single customers would potentially violate Sections 201 or 202 of the Act. Ameritech and Bell Atlantic also do not address what, if any, time limits would be placed on these discounted offerings. Without reasonable time limits, ILECs could use discounted offerings to “lock-up” customers in markets where real competitive alternatives do not yet exist, but where competitive entry is expected in the future. Accordingly, the Commission should limit the time period of any discounts or contract tariffs.

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<sup>11</sup> Bell Atlantic’s proposal does apparently have some limits on pricing flexibility for transport based on wire centers. However, it is impossible to discern from Bell Atlantic’s *ex parte* submission how this would be implemented.

Furthermore, Ameritech and Bell Atlantic failed to justify the growth discounts in their proposals. These growth discounts would likely benefit BOC long distance affiliates who, once authorized under Section 271, could have significant growth. Finally, the Ameritech and Bell Atlantic proposals did not address the extent to which they should be required to publish the terms and conditions of service they intend to propose in response to an RFP. The Commission should require ILECs to publish the terms and conditions of service, which would promote competition by permitting other carriers to offer customers a more desirable offering.

C. Geographic Deaveraging Should Be Used to Achieve Cost-Based Pricing, Not As a Form of Pricing Flexibility

Both the Ameritech and Bell Atlantic proposals focus on geographic deaveraging as a principal means of achieving pricing flexibility. However, the concept of geographic deaveraging should not be linked either to ILEC pricing flexibility or to the presence (or absence) of competition. Geographic deaveraging should instead be used as a tool to bring rates closer to cost, which is a key Commission goal for access charges.<sup>12</sup> Pricing flexibility does not necessarily bring prices closer to cost (especially where competitive market forces are not effective, which is the case today in the local exchange market), so consideration of geographic deaveraging should not be limited to the context of pricing flexibility proposals.

The Commission has previously recognized that the costs of transport and termination of traffic tend to vary between geographic regions, based on factors such as traffic density.<sup>13</sup> Access

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<sup>12</sup> *Access Charge Reform Report and Order*, at ¶ 265.

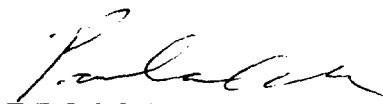
<sup>13</sup> *See Expanded Interconnection with Local Telephone Company Facilities*, Second Memorandum Opinion and Order on Reconsideration, CC Docket No. 91-141, 8 FCC Rcd 7374, ¶ 98 (1993); *Local Competition Order*, at ¶ 764.

charges that fail to reflect these cost differences will tend to result in economic distortions, as do other disparities between rates and costs. If the Commission adopts a prescriptive approach to access charge reform, that approach should incorporate a method of identifying geographic cost differentials and reflecting these differentials in access rate design. This deaveraging should be mandatory and cost-based, and not subject to the whims or the competitive strategies of the dominant ILECs.

### III. CONCLUSION

For the foregoing reasons, CTSI requests that the Commission refrain from adopting pricing flexibility at this time. Instead, to promote competition in the local exchange, the Commission should continue to implement and enforce the key market opening provisions of the 1996 Act, and should consider geographic deaveraging of access charges as a prescriptive tool rather than a form of pricing flexibility.

Respectfully submitted,



Russell M. Blau  
Pamela S. Arluk  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
(202) 424-7500

Dated: October 26, 1998

Counsel for CTSI, Inc.

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> day of October 1998, copies of the foregoing Comments of CTSI, Inc. were served by hand delivery to the parties on the attached service list:

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
1919 M Street, N.W. - Room 222  
Washington, DC 20554

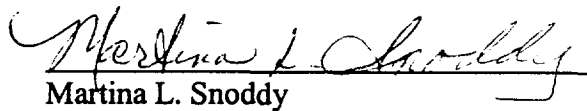
Jane Jackson  
Chief, Competitive Pricing Division  
Federal Communications Commission  
1919 M Street, N.W. - Room 518  
Washington, DC 20554

Richard Lerner  
Deputy Chief, Competitive Pricing Division  
Federal Communications Commission  
1919 M Street, N.W. - Room 518  
Washington, DC 20554

Tamara Preiss  
Competitive Pricing Division  
Federal Communications Commission  
1919 M Street, N.W. - Room 518  
Washington, DC 20554

ITS  
1231 20<sup>th</sup> Street, N.W.  
Washington, DC 20554

Kathryn Brown  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W. - Room 500  
Washington, DC 20554

  
Martina L. Snoddy